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Trends in Dutch prisoners rates: regression to the European mean or enduring exception?

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Introductory remarks

With the abolition of capital punishment in most developed nations, the number of people in prison per 100.000 has become the key indicator of the punitiveness of national criminal justice systems. In the early 1970-s the Netherlands held a world record of leniency in criminal sentencing with 23 prisoners per 100.000. This was by far the lowest prisoners rate of developed nations at the time. Although the Dutch prisoners rates thereafter went up, they stayed well below the European mean up to the mid 1990-s. This remarkable fact inspired Dutch as well as some foreign criminologists to ruminate about a supposedly unique, Dutch culture of tolerance regarding criminal behaviour (Hulsman et al, 1978; Downes, 1988). In 1986 I myself related the then still relatively low prisoners rates of The Netherlands to the pillarized nature of Dutch society (in Dutch known as *de verzuiling*) (Van Dijk, 1990)¹. Before I comment on later developments and on the present situation, I will briefly summarize my argument about the Dutch prisoners rates of 25 years ago.

The concept of the pillarized society refers to the organization of Dutch society along lines of religious denomination rather than social classes. From the 17th century onwards Protestant and Catholic communities kept each other politically more or less in the balance and were fiercely in competition with each other. Each of the churches developed its own networks of institutions delivering different forms of charity to its local communities (help for orphans, disabled people or the sick). The “pillars” were further developed in the second half of the 19th century. In the 20th century the church-based institutional networks further expanded and were joined by a new “red pillar”, centring around the Labour party. Each of the pillars ran its own political parties, labour unions, council estates, newspapers, broadcasting companies, schools, hospitals, houses for the elderly and sports clubs as well as organizations for probation/aftercare and child welfare. Many of these institutions were funded or co-funded by the government but remained legally independent from the state. They were organizationally linked to either the Protestant or Catholic churches or to the Labour Party/Labour unions.

The concept of the pillarized society explains the strength of intermediary structures in Dutch society in the 20th century. It has also been used to explain the Dutch tradition of political accommodation in national politics (Bagley, 1975; Lijphart, 1975). Although many citizens lived from cradle to grave in the splendid isolation of their own column, at the highest political level in the capital a spirit of mutual tolerance prevailed. Political parties affiliated with the main pillars routinely entered into coalition governments with changing compositions.

My article explored whether the concept of the pillarized society could also shed light on the comparatively benign state of criminal justice in the Netherlands around 1970-1990. I pointed at three factors that might have contributed to the production of relatively low prisoners rates. First, the pillarized society maintained through its many intermediary structures a level of informal social control over young people that was relatively high from an international perspective. For example, around 1970 the churches still played a major role in organized sports activities. This massive involvement in youth work may have had a preventive impact on juvenile delinquency rates. Second, vulnerable families and wayward young were supported by social institutions run by the pillars. Important examples were the powerful, church-based organizations for childcare and for rehabilitation of ex-prisoners. Through these latter organizations, protestants ministers and priests played an important role in the design and implementation of penitentiary programmes. Till the early 1980-s the involvement of the churches in the execution of penal policies was expressed in the practice that name tags on prison cells indicated the religious denomination of the inmate. The church-based probation organizations made extensive use of volunteers. Each of the pillars was ready to invest considerable human and financial resources in

¹ The article published in 1989 was based on a lecture given to the participants of a conference on the occasion of the centurial celebration of the Dutch Penal Code of 1886 in Amsterdam (Van Dijk et al, 1986).

the reintegration of prisoners from their own communities. The pillarized nature of prisoners re-entry might have helped to reduce recidivism.

Thirdly, the tradition of accommodation at the political level just mentioned, demanded that each pillar invested considerable discretionary power in its social elites. The political culture and institutional arrangements in The Netherlands could be characterized as a mediated or indirect form of democracy. A telling feature of Dutch democracy is that Mayors of big cities are not elected but appointed by the central government. Candidates are chosen by the minister of Interior from a pool of national politicians. In the larger cities the candidates invariably belong to one of the main pillars/political parties. Up till quite recently political careers were almost exclusively made within the established channels of the main political parties. There was little room for individual politicians to directly appeal to the voters.

Another feature of the pillarized political culture is the retention of a court system which is exclusively run by professional lawyers appointed for life. Also prosecutors are career civil servants, trained and remunerated similarly as judges. By tradition senior judges and prosecutors were, just like Mayors, recruited from the upper segments of the pillars. The Dutch justice system operates without any involvement of lay judges or juries.

Within the confines of their own pillars, politicians and judges tended to hold moderate views of crime and offenders and to have an open mind for new ideas about social case work, preventive mental health and treatment of offenders coming from the USA. An example of typically Dutch policies in this domain is the introduction of special treatment arrangements for mentally disturbed offenders. Such offenders are offered long term treatment by psychiatrists in private clinics, run by the pillars. Also, the execution of penal sanctions for minors was partly put in the hands of church-based institutions. Relatively liberal policies regarding abortion and euthanasia, introduced in the final decades of the last century, can also be seen as fruits of "the politics of accommodation". In both cases new standards were incrementally introduced by the judicial system and by and large tolerated by the political establishment operating in coalition governments. Another interesting case history is the adoption of liberal drugs policies. In the 1970ties experts recommended a differential policy for soft and hard drugs and a humane, health oriented policies regarding drug addicts. These recommendations originally emanated from a working group of experts, set up by a federation of church-based voluntary organizations in 1970 (called after its chairman, professor of criminology Loek Hulsman). The commission's recommendations on the need to differentiate policies for soft and hard drugs and for a medical approach to drugs addiction were soon adopted by the government².

In sum, the pillarized society seems to have contributed to the retention of relatively low prisoners rates in several ways. First it helped to control crime and delinquency through the interventions of powerful intermediary structures exercising informal or semi-formal social control over young people. The pillarized intermediary structures provided the type of interventions that are currently known as primary, secondary and tertiary crime prevention. Second, the somewhat elitist nature of Dutch political culture allowed the political-judicial establishment to experiment with penitentiary innovations and maintain relatively mild sentencing tariffs. Both factors have mutually reinforced each other. Together they can help to explain the exceptionally low prisoners rate of The Netherlands around 1980.

At a higher level of abstraction, the punitiveness of nations has been found to be strongly related to levels of socio-economic inequality (Wilkinson, 2005; Van Kesteren, 2009) and to the strength of the welfare state (Leppa-Seppala, 2008). More equalitarian societies tend to produce lower rates of prisoners. The Dutch case of the pillarized society can be understood as a specification of the general finding that economic and social equality foster relatively non-punitive criminal policies.

In a concluding paragraph, I observed that, at the time of writing (1986) the pillarized society was being eroded by the affluence-driven joint processes of individualism and secularization. In a brief period of time, the pillars seemed to be losing control over their communities. In many fields

² Although for many years, these liberal drugs policies have been a bone of contention in the international political arena, they seem to have achieved its main objective of containing the spread of drug addiction and related health problems reasonably well (WODC/Trimbos, 2010).

of life Protestant, Catholic and Socialist organizations entered into mergers, shredding their past affiliations. These so called processes of “depillarization” (in Dutch: ontzuiling) constituted in my view a challenge for the “Dutch exception” in matters of crime and criminal justice. Since the pillarized society seemed to be of diminishing importance, I expressed doubt about the sustainability of the country’s low prisoners rates. I observed that in 1985 the Dutch government had decided to respond to rising numbers of people sentenced to imprisonment with the expansion of prison capacity. This expansion could be seen as an ominous sign that the era of Dutch tolerance was nearing to its end. Critics of the expansion had indeed warned against a first move on a slippery slope towards a harsher, Americanized criminal policy. On a more optimistic note, I pointed out that the Dutch government had in its white paper Society and Crime (1985) proposed a comprehensive, balanced strategy against volume crime, explicitly rejecting a “war on crime”. It did not only announce the building of new prisons but simultaneously launched, with unanimous support from the main political parties, an ambitious, relatively well-funded programme for crime prevention and victim assistance. This programme could in my view be seen as a last-ditched effort to maintain formerly church-based institutions of informal social control in the new framework of the extended welfare state. The title of my article was: Dutch Criminal Policies at the Cross- Roads³. The article ended with a cautiously optimistic note on the prospects of preserving the Dutch tradition of moderation in criminal matters.

Revisiting the statistics

With hindsight, it appears that the modest expansion of prison capacity in 1985 has, as predicted by the governments’ critics at the time, proven to be the beginning of a prolonged prison building spree. Over the past twenty years the prison capacity in The Netherlands has been more than tripled in size.

The Council of Europe has for many years collected and published comparative statistics on the numbers of prisoners in the Member States. These official statistics have generally been accepted by criminologists at face value, unlike the more heavily contested police-based statistics on levels of crime. Table 1 presents an overview of trends in prison rates for selected developed countries between 1980 and 2007 according to the Council of Europe Annual Penal Statistics-SPACE1. These statistics are also published in the European Sourcebook and in the reports on crime and justice statistics of the Ministry of Justice’s Research and Documentation Centre and the Central Bureau of Statistics (Criminaliteit en Rechtshandhaving, 2008)⁴. Similar statistics are published by Eurostat (Tavares & Thomas, 2009) and by the United Nations (Walmsley, 2009).

³ “One component of the plan announces the construction of five new prisons each with 250 cells and more stringent prosecution of petty crimes. This component suggests a step towards a more repressive criminal policy. Yet the Dutch government also categorically rejects the concept that the crime problem can be dealt with effectively by means of a more repressive criminal policy alone. It has directed financial support to over 200 local crime prevention initiatives in 90 different cities. An historical perspective suggests that the current crime prevention campaign is an effort to recover the level of informal social control that previously was exercised by pillarization. Criminal policy in the Netherlands, the industrialized nation with the lowest imprisonment rate, appears to be at a crossroads.” (Van Dijk, 1989).

Table1 Number of prisoners per 100.000 inhabitants

	1980	1985	1990	1995	2000	2001	2002	2003	2004	2005	2006	2007
The Netherlands	23	33	46	67	90	95	101	113	124	134	125	113
Belgium	56	64	65	76	83	85	90	84	88	90	96	95
Denmark	63	65	67	65	61	59	64	66	70	76	69	66
Germany *	91	95	82	81	97	96	95	96	97	96	96	95
England and Wales	86	93	90	99	124	126	137	139	140	143	145	148
France	66	78	84	92	80	77	88	93	91	92	92	100
Luxembourg	.	.	.	.	90	81	86	111	121	152	164	155
Bulgaria	.	.	.	.	115	114	122	128	140	158	159	151
Estland	.	.	.	.	328	350	341	354	338	327	322	263
Finland	106	90	69	63	56	59	67	66	66	73	71	69
Greece	.	.	.	.	76	79	78	81	.	87	91	100
Hungary	.	.	.	.	158	171	177	168	162	162	155	150
Ireland	.	.	.	.	76	80	78	75	.	.	74	80
Italy	56	73	46	83	94	95	100	102	97	102	65	78
Letland	.	.	.	.	353	364	363	349	333	313	285	286
Lituania	.	.	.	.	240	291	326	288	227	233	237	219
Norway	44	51	56	57	57	59	59	64	65	67	68	71
Austria	.	.	.	.	83	85	92	97	.	107	105	108
Poland	.	.	.	.	169	207	209	211	208	217	230	234
Portugal	.	.	.	.	.	132	133	137	.	122	119	109
Rumania	.	.	.	.	221	225	230	208	185	175	167	141
Scotland	.	.	.	.	.	.	129	131	136	133	141	145
Slovenia	.	.	.	.	57	58	56	55	56	57	65	67
Slovakia	.	.	.	.	297	139	146	164	177	173	161	151
Spain	.	.	.	.	114	117	126	136	140	142	146	151
Tsjech Rep	.	.	.	.	219	207	164	167	.	186	186	185

Sweden	55	52	58	71	64	69	73	76	82	78	79	75
Zwitserland	.	.	.	.	89	72	69	72	82	82	79	76
Australia	.	.	.	96	112	115	114	118	120	124	.	.
Canada	.	.	.	131	118	116	112	115	.	.	.	.
Japan	.	46	39	37	47	50	53	58	.	62	63	.
United States	.	312	462	603	686	688	706	716	723	737	751	756

** Up to 1990 statistics for West Germany and Berlin only.

Source: WODC, Home Office,
Council of Europe

The data presented in table 1 confirm the exceptionally steep rise of the Dutch prison population. They also suggest that The Netherlands belonged in 2007 with a prisoners rate of 113 to the group of most punitive countries in Western Europe. Other sources confirmed that the Dutch rates lie above those of most Western European countries ⁵.

The steepest rise in Dutch prisoners rates has occurred between 1995 and 2000. An explanatory note explains that this surge is partly caused by the switch to a new source of information: the improved prison statistics of the Council of Europe. From 1999 onwards persons convicted for criminal offences receiving treatment in special mental hospitals are included in the Dutch figures. The inclusion of this category of detainees seems warranted since these persons have been convicted by criminal judges for serious offences and would in other countries have been detained in (special departments of) prisons. It is somewhat surprising that they had been excluded in previous overviews. With hindsight Dutch prison statistics seem in the past to have been somewhat deflated by the exclusion of mentally disturbed convicts held in private clinics, traditionally run by the pillars. The Dutch prison rates around 1980 would probably have been less exceptional if the offenders kept in special clinics would have been included.

The prisoners rates of The Netherlands reported by the Council of Europe have not only been readjusted. They also differ from those of Eurostat and the United Nations (Walmsley, 2009). These findings raise the question about which standards for inclusion have been used. The calculation of prisoners rates seems to be less obvious than has previously been assumed. Lappi-Seppala (2008) has raised doubts on the comparability of prisoners rates on theoretical grounds (Lappi-Seppala, 2008). In the latest edition of the Council of Europe Statistics, the national prison statistics have been subjected to a (long overdue) critical review (Aebi & Delgrande, 2009). The report discusses the need of ascertaining whether or not national figures include subcategories such as minors held in institutions for juvenile offenders, mentally ill offenders held in special hospitals and illegal aliens held for administrative reasons. The report subsequently concludes that the existing national figures vary greatly in terms of the inclusion or exclusion of these subcategories and are therefore not strictly comparable. The authors have to the extent possible readjusted the prisoners rates of individual countries. As the authors observe in a footnote, the Dutch figures had to be adjusted more than those of other countries because of the inclusion of considerable numbers of illegal immigrants held in administrative detention pending decisions on their status. The Dutch figures are further inflated by the inclusion of minors

⁵ According to the COE the total number was 18.746 in 2007. Eurostat reports the number to be 14.450 in 2007 (Aebi, Delgrande 2009). According to the Walmsley (2009) it was 16.416 in 2008. According to all these estimates the Dutch rate lies significantly above the mean of Western European countries.

placed in institutions for juveniles by civil courts by way of child protective measure.⁶ These two categories should not have been included according to the definitions of prisoners used by the COE. The publication duly notes that the Dutch prisoners rates as published by the COE have been more inflated than those of any other country.

The report presents a table with adjusted prisoners rates for adults for 2007. In this table the report presents national figures of adult prisoners excluding the subcategories just mentioned. These adjusted prison statistics reflect the hard core of adult persons held in prisons for the commission of criminal acts. Because of the clarity of the standard for inclusion, they are more suited for comparative purposes than the unadjusted statistics. The results are presented in table 2.

Table 2 Number of adult offenders detained in prison per 100.000 (source: SPACE 1, Survey 2007/ 24 March, 2009)

	2007
Netherlands	72.2
Belgium	90.4
Denmark	66.3
Germany	83.7
England en Wales	139.3
France	96.5
Luxemburg	148.5
Finland	69.5
Ireland	78.6
Italy	75.9
Norway	70.9
Austria	99.7
Portugal	104,2
Scotland	131,7
Spain	142.9
Sweden	69.5
Zwitserland	70.3
European mean	119.4

According to this table the Dutch prisoners rates per 100.000 for adults in 2007 was 72 (a total number of 11.972). This rate lies 30% below the rate of 113 published by the COE. The adjusted Dutch rate also lies far below the European mean of 119. The Dutch rate is considerably lower than those of France (96), Germany (83) and Belgium (90). In fact, the rate is with those of Switzerland and Sweden the lowest of all Western European countries. We suspect that the prisoners rates for The Netherlands published by Eurostat and the United Nations are similarly inflated by the erroneous inclusion of illegal immigrants and juveniles in institutions at the order of a civil judge.

Conventional wisdom among criminologists holds that Dutch prison statistics have exploded from one of the lowest in Western Europe to one of the highest. This notion now appears to have been based on seriously flawed statistics. The older Dutch figures were deflated by the exclusion of mentally disturbed offenders in hospitals and the newer ones were inflated by the inclusion of illegal aliens in administrative detention and juveniles in institutions at the order of

⁶ The inclusion of illegal aliens is explained by the fact that special institutions for illegal aliens/asylum seekers are under the management of the same justice-related agency that is responsible for prisons (Dienst Justitiele Inrichtingen).

civil courts. If these errors are corrected, trends in prisoners rates in The Netherlands appear to have been less extreme compared to those of other countries than was previously assumed. The correct number of prisoners per 100.000 inhabitants should in our view be based on the numbers of adult prisoners plus the numbers of those convicted for crimes detained in special hospitals and of juvenile offenders convicted by juvenile justice courts for criminal acts. For The Netherlands this would result into absolute numbers of 15.777 in 2007 and 14.734 in 2008 (a rate per 100,000 of 88.1)⁷. Comparable statistics from other European countries are not available but the corrected Dutch rates stay without any doubt below the Western European mean.

This empirical critique of the prisoners statistics of COE, Eurostat and UN sheds a new light on the issue of Dutch prisoners rates. These rates have been less exceptional than assumed. But in some respects the Dutch situation still stands out as rather special. They have since 1980 gone up more steeply than elsewhere in Europe. The (uncorrected) COE/Eurostat figures presented in table 1 point at another peculiarity in the Dutch prisoners rates. After its zenith of 134 in 2005, the Dutch prisoners rates have suddenly dropped steeply, by over 20%, thereafter. In no other developed country, besides Portugal, similarly significant drops have occurred. In 2008 the unadjusted rate had dropped further to 106 per 100,000. Preliminary data on 2009 suggest a continuation of the downward trend. The Dutch prisoners rates are plummeting while rates in other countries remain stable. Dutch rates seem set to become once one of the lowest in the region. Policy-decisions by the Dutch government confirm the radical nature of the recent decline in prisoners. In response to the obvious downward trend, the Ministry of Justice has in 2009 embarked on a major programme of downsizing its prison capacity. Several prisons will be closed down and some prison space has been rented out to Belgium.

What factual conclusions can be drawn from these findings on prisoners rates regarding Dutch criminal policies? Thirty years ago the rate was considerably lower than the European mean. It has then moved up steeply and has perhaps temporarily surpassed the Western European mean. However, if the figures are made more comparable by the exclusion of various subcategories, the Dutch core rate of adult offenders in prison seems still to be below the Western European mean. These results raise several important questions. The first question is how the volatility in the Dutch rates can be explained? Why did they go up faster than elsewhere and are they now falling faster than elsewhere. Was this curvi-linear trend caused by changes in the numbers and seriousness of cases put before the Dutch courts or was it caused by sudden step changes in the sentencing tariffs of the Dutch courts? In other words was the movement in prisoners rates caused by changes in the level of detected crime or in sentencing tariffs of the courts? The exceptional magnitude of the changes in The Netherlands makes an in depth analysis of the Dutch case worthwhile since it might lead to "poenametric" insights of more general interest.

The second question raised by the Dutch trends in prisoners rates is how movements in crime in the Netherlands and/or in the sentencing tariffs of the Dutch courts can be sociologically explained. For this purpose, I will revisit my previous interpretation of the exceptionally low Dutch prisoners rate around 1970-1990. Can the volatility in the Dutch prisoners rate and their current comparatively modest level still be usefully interpreted within the context of the Dutch traditions of a pillarized society? Or has the government embarked on a new policy, balancing preventive and repressive approaches to crime?

Trends in prisoners rates: crime driven or sentence- driven ?

The rise in Dutch prisoners rates since 1985 has by several commentators been attributed to a toughening up of sentencing tariffs. As such it has been interpreted as a falling in line of Dutch sentencing policies with the new wave of punitiveness emanating from the USA (Junger –Tas, 1995). Pakes concluded that traditional Dutch reductionist penal policies had been put into the reverse (Pakes, 2005). Van Swaaningen and Downes (2007) likewise deplore the "punitive turn" taken by the Dutch. We have discussed above that these observations were partly based on

⁷ These numbers have also been submitted to the Council of Europe and the UN for inclusion in future publications and will also be submitted to Eurostat by the CBS (personal communication by Paul Smit of the Ministry of Justice to the author).

erroneous statistics. We also would like to question the assumption that increases in rates of prisoners always reflect a punitive turn. In a recent, in depth analysis of Dutch prisoners trends Vollaard and Molenaar (2009) conclude that sentencing tariffs for separate categories of crime have not changed very much. Their results show that the upward trend in prisoners rates between 1990 and 2003 is largely accounted for by increases in the numbers of cases of serious crimes such as homicides and armed robberies. In other words, the increase in numbers of prisoners was largely driven by a boom in serious crime. This conclusion confirms previous analyses by Grapendaal et al (1997) who have also concluded that sentencing tariffs had not significantly changed since 1990. An exception was the increased severity of sentences for violent, sexual crimes. The stiffer penalties for sexual violence seem to reflect changes in cultural norms regarding such behaviour, especially sexual violence between intimates, rather than a change in punitiveness across the board.

The now available evidence on Dutch sentencing shows that the upward trends in prisoners rates are largely explained by a changes in the volume and seriousness of the cases tried. This might even be the case to a larger extent than Vollaard and Molenaar themselves assume. They have looked at changes in sentencing tariffs for ten different categories of crimes. On this basis they conclude that the tariff for categories such as robbery has not become much more severe. But even if the average sentences for such crimes would have gone up, this might not necessarily imply that a stiffer tariff has been adopted. An analysis differentiating between ten categories of crime does not fully catch possible changes in the seriousness of the cases within these categories. For example the use of firearms in cases of robbery might have become more common.

There are compelling arguments to assume that over the past years average sentences have become somewhat stiffer because of changes in the composition of the cases tried. Since investigation departments, prosecutors and courts possess limited resources, the less serious cases tend to be filtered out. In a period of rising crime, the mean seriousness of cases within categories is likely to go up. The increased average seriousness of the cases per category tried by the courts could very well explain possible increases in the length of the sentences imposed. Another factor that could lead to higher sentences without a change in punitiveness, is recidivism. The authors have not controlled for the possibility that a higher proportion of suspects in 2000 might have been recidivist offenders than was the case twenty years ago. Since recidivism is one of the key determinants of sentencing severity, sentences might have gone up without changes in the judicial tariffs. In an era of increasing crime rates the proportion of recidivists is likely to be on the rise. The recidivist factor alone can act as a major driver of sentencing severity, even when sentencing tariffs remain unchanged.

If the steep rise in Dutch prisoners rates cannot be attributed to changes in sentencing tariffs- and thus not to increased punitiveness of the courts-, what about the sudden drop in prisoners rates since 2006? In the same article Vollaard and Molenaar (2009) assert that, although a drop in serious violent crime might have been a contributory factor, the major cause of the drop seems to have been new legislation and prosecution guidelines promoting the substitution of short prison sentences by community service orders. In their view, the recent drop in prisoners rates is probably caused by milder sentencing tariffs for non-serious crime such as burglaries introduced in the framework of newly introduced criminal policies. In the media this conclusion was presented as evidence that the Dutch judiciary had turned soft on crime. According to some commentators it had apparently lost its touch with public opinion.

Analysts of the Ministry of Justice repeated the analysis, using datasets which allow differentiation between sentences for more subcategories of crime than those used by the authors. This analysis checks in a more detailed way to which extent changes in the numbers of imprisonment imposed are caused by changes in numbers of cases and changes in average sentences respectively. Table 3 shows a synthesis of their results. The table presents the numbers of prison sentences per category, average duration of prison sentences, number of years of imprisonment imposed as well as changes in the latter for all crimes and for selected subcategories of crime. The column at the right shows the proportion of the total decline in imposed years of imprisonment attributable to the imposed sentences for the different subcategories.

Table 3 Sentencing data for 2003 to 2007 from The Netherlands, per subcategory of crime

	No. prison sentences			length of imprisonment			total years imprisonment			change in years	% of change
	2003	2007		2003	2007		2003	2007			
violent crime											
Rape	229	161	-30%	521	502	-4%	327	221	-32%	-106	2%
Homicide	1.130	667	-41%	679	746	10%	2.102	1.353	-36%	-749	15%
Assault	1.698	1.861	10%	97	88	-10%	451	446	-1%	-5	0%
Robbery	2.432	1.595	-34%	289	310	7%	1.923	1.356	-29%	-567	11%
property crime											
Fraud	2.455	1.685	-31%	86	86	0%	580	398	-31%	-182	4%
Theft	7.391	3.315	-55%	28	37	32%	561	333	-41%	-228	5%
aggrav theft	7.680	4.004	-48%	90	95	6%	1.888	1.041	-45%	-847	17%
Fencing	1.187	617	-48%	65	66	3%	210	112	-47%	-98	2%
Narcotics											
Harddrugs	5.226	3.271	-37%	291	249	-14%	4.168	2.232	-46%	-1.935	39%
Softdrugs	328	311	-5%	130	92	-29%	117	79	-33%	-38	1%
Total	37.019	23.674	-36%	143	147	3%	14.465	9.514	-34%	-4.951	100%

These analyses show that the years of imprisonment imposed by the Dutch courts dropped from a total of 14.465 in 2003 to 9.514 in 2007 (-34%). The drop by 4.951 years is for 84% explained by decreases in the numbers of prison sentences for serious crimes such as homicides, robbery, aggravated theft/burglary and trafficking in hard drugs. The data show a considerable drop in the numbers of cases of serious crime put before the courts. During these years the average length of prison sentences for these categories did not decrease. In fact the duration of the prison sentences went slightly up, with the exception of sentences for drugs cases.

The decrease in imposed prison sentences for aggravated theft explains 17% of the total decrease in imposed years of imprisonment. This means that substitution of community service for short prison sentences has probably indeed played a role in the drop in prisoners but not a major one. The number of community services orders has gone up from 33.450 in 2003 to 40.000 in 2007 but these sanctions can only be imposed to replace prison sentences of up to three months. They cannot by themselves explain the fall in years of imprisonment imposed⁸. The

⁸ I thank Bert Berghuis and Jaap de Waard of the Ministry of Justice for sharing with me the results of these analyses. As part of the analysis a scenario study was conducted which applied the sentencing tariffs of 2003 to the numbers of cases per category of crime in 2007. This scenario resulted in a drop

hypothesis that the drop is mainly caused by a downward adjustment of sentencing tariffs by the courts, especially by replacing prison sentences by community service orders in cases of burglary, is refuted.

The drop in the number of cases of serious violent crime before the courts is likely to have been caused by declines in the numbers of such crimes committed. Results of victimization surveys point at a significant drop in most forms of volume crime in The Netherlands (Van Dijk, Van Kesteren & Smit, 2008). Homicide rates and rates of police-recorded robberies, burglaries and car thefts have also decreased significantly since the mid 1990-s (Tavares, Thomas, 2009; Smit, Nieuwbeerta, 2007). Numbers of cases of trafficking in hard drugs have also decreased. This seems to be the result of the introduction of stricter checks on drugs possession in ports of entry in the Dutch Antilles from where cocaine used to be imported to The Netherlands. Consequently fewer arrest have been made for drugs trafficking upon arrival at Schiphol Airport.

In sum the drop in Dutch prisoners rates is largely accounted for by reductions of the numbers of serious offences tried by the Dutch courts. The policies to replace short prison sentences by community service orders have contributed only marginally to the drop in prisoners.

As discussed, the prolonged rise of prisoners rates between 1990 and 2003 was largely caused by a boom in serious crime. Similarly, the recent drop in prisoners rates seems mainly to have been caused by a drop in serious crime.

These results shed a new light on the issue whether Dutch judges have become more or less punitive over the years. The curvi-linear trend in Dutch prisoners rates cannot be attributed to distinct changes in sentencing tariffs. Both the steep rise in years of imprisonment imposed by the courts in the last two decades of the past century and the fall in recent years were largely determined by changes in the number of cases of serious crime brought before them. These numbers have consistently gone up for several years. They reached a ceiling around 2000. Over the same period sentencing tariffs seem not to have changed much. If the available data on prisoners rates tell us anything about sentencing in The Netherlands, it is that sentencing tariffs per category of crime have remained remarkably stable over the last three decades. Crime rates as well as concern about crime have boomed in The Netherlands between 1970 and 2000 and this has led to a media –led demand for more punitive criminal policies. It prompted the Dutch government to issue its first ever comprehensive policy plan against crime in 1985. In recent years levels of volume crime and serious crime have fallen. Investigators have more resources available to investigate serious crimes. Stricter responses to violent crime have become a political priority and penitentiary capacity is available to detain more offenders. In spite of these changing external circumstances, sentences meted out by the Dutch courts for individual criminal cases have essentially remained the same. Radical changes in levels of crime, public opinion on crime and in available resources for crime control seem not to have had any discernible impact on the sentencing tariffs of the Dutch courts.

There is evidence that levels of serious crime have been falling in most other Western countries as well, most notably in the USA (Blumstein, Waller, 2005; van Dijk, van Kesteren & Smit, 2008). But this downward trend in crime has not been reflected in subsequent significant falls in national prisoners rates. In this respect The Netherlands prisoners rates show an exceptional trend. Dutch prisoner 's rates seem more tightly linked to movements in the level of serious crime than in, for example, the USA or the United Kingdom. In the latter countries similar drops in crime so far have not (yet) been translated into falling prisoners rates. Perhaps in other countries judges are more responsive to external administrative or political pressures. Surely, in The USA many judges are elected and therefore stand under more pressure from public opinion about sentencing than Dutch judges who are appointed for life. What has happened in other countries can only be determined by focussed empirical research. For the Netherlands it can safely be concluded that sentencing tariffs have proven to be fairly policy-resistant. For this reason any movement in the level of crime is with some delay reflected in prisoners rates.

The analysis of Dutch sentencing patterns has yielded some insights of general interest. Prisoners rates by themselves do not allow conclusions on the severity of prevailing sentencing

in year of imprisonment imposed by the courts of 5.000. A scenario applying the tariffs of 2003 to the numbers in 2007 resulted in an insignificant change of 4 detention years.

tariffs. Such conclusions can only be drawn from a refined analysis of sentencing decisions taking into account the seriousness of the cases brought before the courts. These analyses, then, must be conducted with due methodological care. The conclusion of Junger-Tas (1998) that Dutch sentencing tariffs have become more punitive after 1990 and of Vollaard and Molenaar (2009) that they have become less punitive after 2000 were based on analyses of sentencing data that were insufficiently detailed. For a proper analysis of sentencing data, datasets are required which differentiate to a fairly high degree between the seriousness of the cases processed by the courts. Ideally, such studies should be based on the analysis of samples of individual criminal cases, controlling for different dimensions of seriousness determining sentencing severity and for the criminal records of the offenders involved.

The Dutch debates on sentencing severity or leniency can act as a learning experience for international research in this field. Erroneous conclusions on the causes of changes in prisoners rates can easily be drawn if due caution is not taken. The Dutch authors just quoted, attributed changes in prisoners rates that were largely caused by changes in the level of serious crime to changes in sentencing. This misrepresentation can be interpreted as a product of the “fundamental attribution error” of attributing problematic trends to “internal” factors such as sentencing tariffs rather than to “external” factors (trends in the size and nature of crime). The underlying motive for the error may well have been the wish to construe prisoners rates as essentially controllable by the political process. This interpretation should alert us to the possibility that other criminological literature concluding that trends in prisoners rates are policy- rather than crime-driven may be based on a similar bias.

Comparative data on sentencing severity

We have seen that sentencing tariffs of Dutch courts have been remarkably constant over time. With regard to the sentencing tariffs in The Netherlands, the question remains how these invariable tariffs compare to tariffs for similar crimes in other countries. The extensive comparative analyses of data on six categories of crime conducted by an international research team supervised by Farrington, Langton and Tonry (2004) does not fully meet the standard for proper poenametric research just discussed and falls far short of the proposed case based comparisons controlling for seriousness and recidivism. The analyses differentiate only between six fairly broad categories of crime at the aggregate level. Nevertheless, the results are informative. They suggest that inter country variation in sentencing tariffs is larger than within country variation over time. This result is in line with our conclusion that in The Netherlands variation over time has been remarkably limited. The results also provide some evidence that sentencing tariffs in The Netherlands for robbery were between 1980 and 2000 comparatively mild, especially in comparison to the USA and Australia. The Dutch tariffs were more similar to those in Sweden.

In my own work on global data on crime and justice, I have compared prisoners rates per 100,000 in relation to national homicide rates around 2000 (Van Dijk, 2007). This analysis uses, in other words, homicide rates as a proxy control for the seriousness of the national crime situation. It showed that in a global comparison the Netherlands finds itself in the third quartile for prisoners rates (below average). In terms of homicide rates the country features in the fourth quartile (far below average). These results define the country as one with moderate sentencing tariffs. From a global perspective homicide rates are low and prisoners rates are moderately low as well. The Dutch prisoners rates used were derived from the comprehensive data base maintained by King's College in London (Walmsley, 2008). These rates are similar to the uncorrected rates from the Council of Europe. This means as explained above, that they are inflated. If adjusted rates had been used they would probably have confirmed that from a global perspective The Netherlands possesses a relatively mild penal climate⁹.

⁹ In the annual overview of statistics on crime and criminal justice in the Netherlands, issued in 2009 Smit (2009) presents data on the ratio between the total of convicted persons and numbers of prisoners. These results suggest that Dutch sentencing tariffs are relatively severe. This result is inconclusive for two reasons. The seriousness of the cases tried by the courts is ignored and the analysis uses the inflated Dutch prisoners rates of the Council of Europe (including illegal immigrants in administrative detention).

A rough index of punitiveness was constructed based on rates of prisoners in relation to rates of homicides. Countries with the lowest scores on this index are likely to impose comparatively severe sentencing tariffs. Singapore featured as one of the countries with the most severe sentencing tariffs according to this index (minus 87). The index was constructed with the aim to carry out correlational analyses, for example exploring a possible positive relationship between GDP per capita and sentencing severity. Such correlation was indeed in evidence. For explorative purposes scores of individual countries can, in the absence of other indicators, be of interest as well. The Dutch score was minus 22. This is far below the score of the USA of minus 45. This indicates that Dutch tariffs are much milder than those in the USA. The Dutch score is very similar to the score of the United Kingdom (minus 21) and Italy (minus 16) but higher than the scores of, for example, Germany (minus 12) and France (minus 1). Other Western European countries such as Sweden and Switzerland showed positive scores indicating comparatively even less severe sentencing. The Dutch score on this index of punitiveness situates the country somewhere in the high end of the range in terms of sentencing severity among Western European countries. As said, the Dutch prisoners rate was somewhat inflated. If corrected figures had been included in the analysis, the Dutch score would have been close to that of the Scandinavian countries.

A third source of comparative information on punitiveness are the results of public opinion polls. Findings from the Dutch Agency for Social and Cultural Research show that support for the treatment philosophy in criminal justice has decreased since the 1970s (Pakes, 2005). The International Crime Victims Surveys which have been carried out five times in a broad selection of develop and developing countries between 1989 and 2005, contain a question on the most appropriate punishment for a recidivist offender. Table 4 presents trend data on the percentages favouring imprisonment over community service or other milder forms of punishment.

Table 4 Percentage of the public opting for imprisonment as punishment for recidivist burglar in 2004/05 plus results from earlier surveys in countries 1989 – 2005 ICVS.

	1989	1992	1996	2000	2004-2005
Japan				51	55
Northern Ireland	45		49	54	53
Istanbul (Turkey)					53
England & Wales	38	37	49	51	51
Bulgaria					50
Scotland	39		48	52	49
USA	53		56	56	47
Canada	32	39	43	45	44
New Zealand		26			40
Ireland					38
Poland		31	17	21	34
Australia	36	34		37	33
Sweden		26	22	31	33
Netherlands	26	26	31	37	32
Greece					30
Norway	14				29
Hungary					29
Estonia		43	39	24	26
Italy		22			24
Germany	13				19
Denmark				20	18
Belgium	26	19		21	17
Spain	27				17
Iceland					16
Luxembourg					16
Portugal				26	15

Finland	15	14	18	19	15
Austria			10		13
France	13		11	12	13
Switzerland	9		9		12
Average**	28	29	31	35	33

Source ; Van Dijk, Van Kesteren & Smit, 2008

Table 4 shows percentages of the public favoring imprisonment for a recidivist burglar per country. There was wide divergence across countries. Over 50% favored imprisonment in Japan, Northern Ireland and Istanbul. The population of France (13%) and Austria (13%) are least in favor of imprisonment. Anglo-Saxon countries tend to be among the most punitive (Van Kesteren, 2009). The Netherlands finds itself, once again, in the middle range.

Leaving aside changes in relative levels of support for different sentencing options, the 2000 ICVS sweep showed a hardening of attitudes towards punishment in some countries including England/Wales, Sweden and The Netherlands. This trend has not continued thereafter. In many countries support for imprisonment has remained stable. Lower percentages of the public favored imprisonment in 2005 than in 2000/1996 in the USA, Australia, the Netherlands, Belgium, Finland and Estonia.

Public attitudes towards sentencing and actual prisoners rates are weakly correlated with each other within Europe and, to a lesser extent, globally (Van Dijk, 2007; van Dijk, Van Kesteren & Smit, 2008). In the USA and UK more people favor severe sentences than in other Western countries. The position of The Netherlands is unremarkable: moderately mild public attitudes go together with moderately low prisoners rates. If corrected prison figures had been used, The Dutch position would, once again, have been very similar to that of, for example, Sweden.

High quality comparative studies on sentencing severity remain scarce. The overall impression regarding the sentencing severity in The Netherlands gained from the limited available comparative data is that at present the Dutch position is unremarkable. The available indicators suggest that in a European context both sentencing by the Dutch courts and public opinion is neither relatively mild nor relatively severe. In comparison to the USA and the United Kingdom, the penal climate in The Netherlands can still be qualified as relatively mild and similar to that of Sweden.

The pillarized society and its heritage

The results presented above allow a more precise and fact based appraisal of current and past prisoners rates in The Netherlands. The Dutch rates were comparatively mild around 1985, although this might partly have been a statistical artefact, caused by the exclusion of mentally disturbed offenders kept in clinics. Since 1990 Dutch prisoners rates have moved closer to the European mean in response to a steep rise in (serious) crime. This interim conclusion begs the new question why the level of crime has evidently increased more steeply in The Netherlands than in many other countries. A second conclusion is that falling crime rates have in The Netherlands led more rapidly and radically to falling prisoners rates, in spite of the emergence of somewhat more punitive attitudes among the public. Our analysis showed that the drop in prisoners rates has been facilitated by the retention of more or less fixed sentencing tariffs by the judiciary. Dutch courts seem to be less responsive to external pressures than courts elsewhere, eg those in the USA. This begs the question of the reasons for the relative imperturbableness of the Dutch courts. We will explore whether answers to these two questions can be found in the heritage of the pillarized society.

In our view, the Netherlands has experienced a crime boom in the second part of the 20th century. Similar increases have occurred elsewhere. Probable causes of these booms are increasing opportunities of crime due to increased economic growth and modernization and decreasing levels of informal social control. During the past twenty years levels of crime in Western Europe were furthermore propelled by the failing social integration of new immigrant groups, most notably

those of North African descent. A special criminogenic factor in the Netherlands might have been the relatively high degree of urbanization of Dutch society. However, other countries such as England/Wales have also become highly urbanized and face similar problems with the integration of immigrants. Explanations for the more pronounced crime boom in the Netherlands should in my opinion primarily be found in the sudden erosion of the institutions and cultural traditions belonging to the pillarized society between 1970 and 1990. In an official governmental report of 1985 the rise of crime was attributed to "a decline since 1960 in the influence of many traditional social institutions within which the behaviour of individuals was effectively normalized, such as the family, clubs, and associations, the church, and the schools" (Society and Crime, 1985). It could be said that this trend towards individualism was of course not restricted to the Netherlands. However, it seems plausible that in the 1950s and early 1960s pillarized youth organizations in the Netherlands were still able to employ mechanisms of informal social control more effectively than elsewhere. In 1970 the majority of sports organizations were as mentioned still church-based. Similar declines in the reach and social functions of the pillarized institutions can be given from other areas of social life (Becker, de Hart, 2006). Labour unions, child care organizations, housing estates and probation offices have largely been depillarized. TV and radio broadcasting has to a large extent, though not fully, been taken over by commercial companies. It would not be surprising if such transformations in the cultural and social spheres have created temporary deficiencies in the social regulation of behaviour. Around 1980 Dutch society was internationally known for its liberal attitudes towards the emerging youth culture characterized by the use of drugs and pre-marital sex. An unintended side effect of this permissiveness might have been a comparatively stronger boom in volume crime, including in drugs-related criminality. For a recently depillarized society, traditionally relying on the mechanisms of informal social control of the pillarized organizations, the social integration of large groups of new immigrants from rural areas in urban settings with relatively few functioning institutions of their own, might have been especially challenging too¹⁰.

As said, the launch of nationwide crime prevention programmes in the mid 1980s can be seen as an attempt to reintroduce or revitalize the institutions of informal social control of the pillarized society under the umbrella of welfare provisions. Have crime prevention policies really been different in The Netherlands? In a recent review of the Dutch experiences with crime prevention over the past forty years, I concluded that crime prevention in The Netherlands, although not as fully institutionalized as other vital state functions, seems better organized and better funded than in most other Western countries (Van Dijk/De Waard, 2008). In most other Western countries initiatives to promote crime prevention have been poorly funded and short-lived, partly because of affiliations with political parties on one side of the political spectrum (Crawford, 2009). Dutch crime prevention policies, supported by all main political parties, have proven to be more sustainable. They have also always been pragmatic and evidence-based rather than ideologically informed. Perhaps the most typical manifestation of Dutch crime prevention is the promotion of semi-formal surveillance in public transport and inner cities (Hesseling, 1995). In 1987 the Ministry of Justice entered into an effective partnership with the Protestant and "red" federations of social housing organization to introduce hundreds of "social caretakers" in high crime housing estates to enhance informal social control. Such social measures were coupled with the introduction of national standards for situational crime prevention in different domains. In areas such as car security, home security, security of businesses and of leisure centres these policies have been successful (Wittebrood, Van Beem, 1994; Van Dijk & De Waard, 2008). Security standards incorporated in national building codes have proven to have contributed to the drop in national burglary rates (Vollaard, 2010). From the outset crime prevention in The Netherlands has focussed on both contextual factors and social factors pertaining to (potential) offenders. Situational crime prevention policies have been combined with innovative forms of offender-oriented prevention such as programmes for parental support and for diversionary sanctions for

¹⁰ A recurrent theme in the debates on the social integration of ethnic minorities in The Netherlands is the need of ethnic communities and their religious organizations to take up responsibility for the social control of their own deviant youth. A topical manifestation of traditional pillarized policies is the appointment of prominent representatives of ethnic communities in high positions such as a person of Turkish descent, Mrs Albayrak as deputy minister of Justice responsible for immigration and one of Moroccan descent, Mr Aboutabi, as Mayor of Rotterdam (a town where ethnic tensions are the most serious).

juvenile offenders (so called HALT sanctions). Some of these programmes have shown disappointing results and have been discontinued or reformed. The commitment to invest in vulnerable individuals and families, however, has not waned. In recent years secondary and tertiary offender oriented prevention has been put in the hands of so called Security Houses, set up in all major cities. These houses are joint ventures of municipal agencies for child care and education, police and prosecutors. They are a new manifestation of the multi-agency approach typical of Dutch crime prevention policies. In 2009 the government announced considerable investments in a new programme of evidence-based programmes for the re-insertion of (young) offenders. This expensive proposal was welcomed by the main political parties.

Dutch preventive crime prevention measures are sometimes critiqued for containing repressive elements (Van Swaaningen, Downes, 2007). This point is well-taken from an international perspective. These policies are as said, pragmatically rather than ideologically inspired. It seems plausible nevertheless that the continued Dutch commitment for preventive approaches, missing in many other countries, is rooted in the long established, integrative traditions of the pillarized society and has contributed to a more humane criminal policy.

Another lasting feature of Dutch crime prevention policies has been the collaboration between public agencies and the corporate world both at the central and local level. The National Platform for Crime Control brings together high ranking officials from the government with CEO's of major Dutch companies and labour union leaders. The national platform, jointly chaired by the Minister of Justice and the president of the Dutch employers federation have effectively addressed many specific crime problems such as armed robbery, car and vehicle theft and recreational violence. As discussed elsewhere, this collaborative spirit can be seen as an example of the Dutch Polder-model, and, as such, as part of the cultural heritage of the politics of accommodation of the pillarized society of the past (Van Dijk/de Waard, 2008). The fall in levels of crime has been observed in several Western nations and is likely to have common causes such as improved policing and security. It seems reasonable to assume, however, that the sustained and broad support for evidence-based preventive approaches has contributed to the distinct fall in levels of crime in The Netherlands.

Finally, a commentary on the relative autonomy of the Dutch judiciary. As discussed, the Dutch judiciary is a fully professional organization without any involvement of lay judges or jury members. All judges are appointed for life. Recruitment and promotion is in the hands of the Council of the Judiciary. For some types of cases the prosecutors follow national guidelines for their sentencing suggestions to the judges. The judges are, however, in no way bounded by these suggestions. In recent years there has been some criticism in the media of the "aloofness" of the judiciary, especially in discussions on a series of alleged judicial errors in high profile cases. The anti-Islam populist party of Mr Wilders has repeatedly expressed its disdain for the judiciary. This criticism may become more outspoken now that Mr Wilders himself prosecuted for stirring up xenophobia and racism and may be convicted. In spite of these criticisms there is evidence from public opinion research that the majority of the Dutch public as well as of the Dutch business community maintains a high level of confidence in the integrity and professionalism of the judiciary (Rechtstreeks, 2004; Dekker & Van der Meer, 2007)¹¹. Proposals to introduce jury trials have in 2009 been summarily dismissed by government and Parliament. The independent, professional judiciary is still widely regarded as a pillar of Dutch society.

In conclusion

At the present juncture criminal policies in The Netherlands seem relatively stable and uncontested. In the general elections for Parliament in 2010 crime and security has not been an issue. Thanks partly to sustained investments in preventive policies, property crime has significantly decreased. The once controversial health-based policies regarding drug addicts (needle exchange programmes and methadone and heroin maintenance programmes) find favour with experts both nationally and across the world and will, with some amendments, probably be

¹¹ See also the annual reports of the World Economic Forum based on the business executives surveys which consistently rank the Dutch courts as the most highly rated in the world in terms of independence and reliability.

retained¹². The independent position of the judiciary is not uncontested but radical changes in their legal status seem for the moment unlikely. For these reasons, prisoners rates have been falling considerably in recent years and are bound to continue falling in the near future. In my personal reading our findings suggest that most of the institutions of the pillarized society may have disappeared but that some its inclusive traditions still remain. Dutch society has certainly not moved towards the unconditional adoption of USA- style, repressive criminal policies. The country seems still committed to professional and pragmatic rather than populist criminal policies, seeking a balance between preventive and repressive approaches.

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¹² The most contested element of the Dutch drugs policies is that the sale of cannabis has been decriminalized at the retail end while the wholesale and production is still largely in the hands of organized crime.

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